

**ORISSA HIGH COURT
CUTTACK**

CRIMINAL APPEAL NO. 12 OF 2001
AND
CRIMINAL APPEAL NO. 27 OF 2001

From the judgment dated 08.12.2000 passed by Md. Abdul Majid, Addl. Sessions Judge, Sonepur in Sessions Case No.30/26 of 1999 and Sessions Case No.54/39 of 1999.

IN CRL. APPEAL NO. 12 OF 2001

Pravatu @ Prativu Dalai
and two others

.....

Appellants

Versus

State of Orissa

.....

Respondent

IN CRL. APPEAL NO. 27 OF 2001

Goura Majhi and Another

.....

Appellants

Versus

State of Orissa

.....

Respondent

For appellants : M/s D.P. Dhal, S.K. Tripathy,
P.K. Rautray, D.K. Pattanaik,
D.K. Das and K. Ratha.

For respondent : Mr. P.K. Mishra,
Standing Counsel.

PRESENT :

**THE HONOURABLE SHRI JUSTICE P.K. TRIPATHY
AND
THE HONOURABLE SHRI JUSTICE PRADIP MOHANTY**

Date of judgment : 30.10.2008

Nine accused persons faced trial in the court of the Addl.
Sessions Judge, Sonepur for the charge under Sections 302/201/34 IPC

vide Sessions Case Nos.30/26 of 1999 and 54/39 of 1999. The aforesaid two sessions cases were registered because of commitment of the cases relating to respective accused persons in two phases. Out of the said nine accused persons, five were found guilty of the offence under Sections 302 and 201 IPC by sharing the common intention and each of them was sentenced to imprisonment for life and imprisonment for three years respectively, which were to run concurrently. The convicted accused persons have preferred the above noted two criminal appeals.

2. According to the case of the prosecution, in the night of 21.02.1998, deceased Ramachandra Rout was detained in the house of accused Goura Majhi. He was subjected to torture after being tied on a pole inside the house and was forced to eat faeces. He was also subjected to physical violence. On the following morning, his face was blackened and in that condition he was made to move through the village being guarded by the accused persons and was left at his house with a caution to his sister Chandrabati (P.W.1) and brother Satyabadi (P.W.2) to see to it that the deceased adopts a decent life style and not to venture into their (accused persons') house any further. It is alleged by the prosecution that the aforesaid act was undertaken by the accused persons with a view to humiliate and harass the deceased. The reason for such humiliation is nowhere on record, even not in the case diary. It is further alleged by the prosecution that on 24.02.1998, two of the accused persons came and cautioned P.Ws.1 and 2 on the conduct/movements of the deceased notwithstanding the fact that the deceased remained confined to his house for those two days. On 24.02.1998, after taking his night meal (supper) at about 9 P.M., the deceased went for strolling and did not return to the house. On 25.02.1998 and onwards, P.Ws.1 and 2 together with some villagers searched for the whereabouts of the deceased but could not trace him. On 26.02.1998, P.W.1 lodged a missing report with the police and on 27.02.1998 she was informed by co-villager Jhasketan Dalai and another (both not examined) that dead body of the deceased was lying in Surubali

Jore (rivulet). On getting that information, P.Ws.1 and 2 together with some villagers went to that Jore (rivulet) and found the dead body of the deceased lying there. They also noticed that flesh from his legs, intestine, etc., had been eaten away by animals. P.W.1 again went and reported the matter to the police. At the stage of inquest, it was noticed by the Investigating Officer (P.W.11) so also by the witnesses to the inquest that deceased had suffered death due to pressing on neck and some other injuries on the body. Accordingly, the inquest report (Ext.4) was prepared and the dead body was sent for post-mortem examination. Dr. P.K. Mohapatra (P.W.4), who conducted post-mortem, opined that the deceased suffered death due to pressing on the neck causing suffocation and that due to that pressing the hyod bone had been broken and the tongue bitten. Thus, P.W.4 submitted the post-mortem report (Ext.1) with the opinion of homicidal death of the deceased. In course of investigation, P.W.11 as well as the other Investigating Officer (P.W.12) found certain articles at the rivulet where the dead body was lying, and that includes a cot and some clothings marked M.Os. I to III, besides M.Os.VI to IX. Such articles were seized under seizure lists (Exts.2, 5 and 6). The Investigating Officer also found a pair of Hawaii Slipper of the deceased lying in the field of the accused Pravatu Dalai and seized under seizure list, Ext.9. In course of the investigation, besides attending to other routine investigation, the Investigating Officers examined the witnesses and ultimately submitted charge-sheet.

3. While denying to the charge framed under Sections 302/201/34 IPC, accused persons also took an alternative plea that it is P.Ws.1, 2 and 10 who committed murder of the deceased. When the prosecution examined 12 witnesses in support of its case, the accused persons examined 4 witnesses in support of their defence. On analysis of such evidence on record, learned Addl. Sessions Judge held that prosecution has proved that the deceased suffered homicidal death and the evidence of P.Ws.3 and 4 read with the evidence of P.Ws.7 and, 8 and 10 are sufficient to corroborate the evidence of P.Ws.1 and 2 not only relating to

the motive of the appellants to commit the crime but also the factum of committing the crime by the said appellants. Accordingly, he recorded the conviction in the manner already indicated.

4. While assailing the aforesaid order of conviction, learned counsel for the appellants does not dispute to the finding of the trial court on homicidal death of the deceased. On perusal of evidence also we find that there is nothing to dispute on the finding that the deceased suffered homicidal death.

5. Learned counsel for the appellants argues that P.W.3-Ganesh Padhan and P.W.5-Achuta Sethi are the two star witnesses for the prosecution and if their evidence is eliminated then prosecution has no evidence to directly or circumstantially prove the charge against the appellants beyond all reasonable doubt. He further submits that P.Ws.3 and 5 though projected as the eye witnesses to the occurrence, i.e., having seen the crime being committed in the night of 24.02.1998, but those two witnesses did not reveal that fact to anybody till 28.02.1998 when they were examined by the police. In that respect, the explanation of P.Ws.3 and 5 that they did not reveal that fact for so many days due to fear of the appellants is an afterthought explanation which has been falsified by the evidence of P.W.2, who has stated that on 25th and 26th P.Ws.3 and 5 were amongst the villagers who were helping them in the search for the deceased. In the above context, submission of learned Standing Counsel is that non-disclosure of the fact by P.Ws.3 and 5 to P.Ws.1 and 2 or to anybody else till 27.02.1998 is because of fear for the accused persons and that is proved from the circumstance that on seeing the police they narrated the incident on 28.02.1998. Indeed, learned Addl. Sessions Judge has favoured the reasons assigned by the prosecution so as to accept the veracity of these two witnesses as the eye witnesses to the occurrence. But on a conjoint reading of the evidence of P.Ws.1, 2, 3 and 5 we find that P.Ws.3 and 5 are the got up witnesses to figure as eye witnesses to the occurrence. Atleast, the circumstances on record suggest to such an inference. According to the

evidence of P.Ws.3 and 5, both of them saw the accused persons committing the crime in the dead of the night, i.e., mid night of 24.02.1998. Yet they did not disclose that fact to anybody either in that night or in the following day. Undoubtedly, the dead body was not lying in the field of the accused persons. Therefore, after the occurrence in the night of 24.01.1998 the dead body was shifted to some other place. These persons did not show their anxiety or anxiousness to find out if the dead body was lying there. That is an improbable human conduct. Even if a person is scared of the accused persons, that could not have resisted his inquisitiveness to see if the dead body was lying there at the spot. Be that as it may, according to the evidence of P.Ws.1 and 2 and also P.Ws.5, 7 and 8, the police came to the village on 27.02.1998. There is no reasonable answer from the side of the aforesaid witnesses as to why they did not disclose about the incident to the police on that day. They also do not state as to under what circumstance the fear complexion was removed. In other words, the explanation offered by P.Ws.3 and 5 for not disclosing the occurrence till 28.02.1998 appears to be an afterthought and a flimsy explanation so as to favour the prosecution. For the aforesaid reasons, we find that P.Ws.3 and 5 are not to be relied on in respect of the occurrence of actual assault.

6. Though P.Ws.3 and 5 stated that the 'Isha' (the long bar attached to a plough) was used to press the neck, but no explanation is forthcoming from P.Ws.11 and 12 or any of the witnesses regarding the non-availability of that weapon. Even the Investigating Officers have not stated that they made attempt but could not trace out that weapon.

7. Above apart, evidence of P.Ws.7, 8 and 10 has been adduced with a view to supplement the evidence of P.Ws.3 and 5. When P.Ws.3 and 5, as per the aforesaid analysis, are not found credible, the other evidence on record is not helpful to the prosecution to complete the chain of circumstances to prove the case circumstantially as against the appellants. The seizure of different articles though has been proved but their nexus with the accused persons has not been proved through clear

and clinching evidence. Learned Standing Counsel though rightly argues that the evidence of D.Ws.1 to 4 should be rejected as they are blatant liars, but even accepting that argument and finding D.Ws.1 to 4 as such, the prosecution cannot succeed because the chain of circumstances has not been complete to prove the guilt against the accused persons. Indeed, the incident dated 22.02.1998 proves a strong motive on the part of the accused persons, but that circumstance alone is not sufficient to prove the charge of homicide against the accused persons.

8. Above all, if the deceased was killed in the night of 24.02.1998, there is no whisper from the prosecution as to at what place that dead body could be kept by the assailants till the night of 26.02.1998, because the corpse must have emitted foul smell after the lapse of about 8 to 10 hours from the time of death. There is no evidence on record that the dead body had been buried and it was unearthed to be dispersed at the rivulet. Under such circumstances, we find that the improper investigation by the investigating agency has resulted in failure of the prosecution to prove the charge against the accused persons and to catch hold of the real culprits. We accordingly hold that the order of conviction and sentence is not sustainable as against the appellants. We grant the benefit of doubt to the appellants and acquit them from the charge under Section 302/201 IPC.

9. The Criminal Appeals are accordingly allowed. Thus, we direct that the bail bonds are discharged of the accused/appellants on bail and the other accused/appellant in jail custody be released if his detention is not required in any other criminal case.

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P.K. TRIPATHY, J.

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PRADIP MOHANTY, J.

October 30, 2008/ **G.D.Samal**